UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GREAT AMERICAN LIFE INSURANCE COMPANY,	:	**Case No. 04CV815**
	:	**Judge Spiegel**
Plaintiff,	:	
	:	
v.	:	
	:	**DEFENDANT KATHARINE THOMPSON'S PROPOSED JURY INSTRUCTIONS AND SPECIAL INTERROGATORIES**
KATHARINE THOMPSON,	:	
	:	
Defendant.	:	

Pursuant to Rule 51 of the Federal Rules of Civil Procedure, Defendant Katharine Thompson requests that the Court give the attached jury instructions and special interrogatories to the jury.

Respectfully submitted,

/s/ william stuart dornette

W. Stuart Dornette (0002955)
Catherine E. Howard (0076432)
Attorneys for Defendant Katharine Thompson
Taft, Stettinius & Hollister, LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
(513) 381-2838/ (513) 381-0205
dornette@taftlaw.com
howard@taftlaw.com

DEFENDANT'S REQUESTED INSTRUCTION NO. 1:

Claims of the Parties

Plaintiff Great American Life Insurance Company ("Plaintiff") alleges Defendant Katharine Thompson ("Mrs. Thompson") conspired with her husband, Morley P. Thompson, Sr. ("Mr. Thompson"), to defraud Plaintiff, Mr. Thompson's creditor, through fraudulent conveyances of property. Mrs. Thompson denies liability as asserted in Plaintiff's count of civil conspiracy for the following reasons: Defendant did not conspire to, participate in, or receive property as part of a fraudulent transfer of property from Mr. Thompson. Over the period in question, Mrs. Thompson in fact transferred to her husband or directly to her husband's creditors several million dollars in cash. Mrs. Thompson did not fraudulently receive personal property pursuant to the three bills of sale, dated May 16, 2001, October 10, 2001, and October 1, 2002. Mrs. Thompson did not fraudulently receive Mr. Thompson's net operating loss carry-forward or her own tax refund. Mrs. Thompson did not receive, fraudulently or otherwise, the transfer of any interest in Woodside from Mr. Thompson, because Mr. Thompson never had any interest in that property to transfer.

DEFENDANT'S REQUESTED INSTRUCTION NO. 2:

Stipulated Facts

The parties have agreed, or stipulated, to the following facts. This means that both sides agree that these are facts. You must therefore treat these facts as having been proved.[1]

1. Mrs. Thompson married Mr. Thompson on November 21, 1999.

2. In 2001, Mr. Thompson arranged for Mrs. Thompson to borrow $2.4 million from Washington Mutual Bank, secured by a mortgage on the Woodside Property.

3. Mrs. Thompson transferred approximately $2.2 million of the $2.4 million Washington Mutual loan to Morley Thompson for his use.

4. Mrs. Thompson made interest payments and paid off the balance, principal and interest, on the Washington Mutual line of credit in 2003.

5. Mr. Thompson's California bankruptcy trustee hired Piers Mackenzie to appraise the value of personal property transferred to Mrs. Thompson.

6. Mrs. Thompson filed joint tax returns with Mr. Thompson from 1999 through 2004.

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[1] Kevin F. O'Malley *et al.*, 3 *Federal Jury Practice and Instructions* § 102.11 (5th ed. 2000); Pattern Jury Instructions U.S. Fifth Circuit District Judge Association, § 2.3 (2004).

7. On December 4, 2001, The Stearns Technical Textiles Company, of which Mr. Thompson was Chairman of the Board, filed for bankruptcy protection.

8. On November 19, 2002, the Court of Common Pleas of Hamilton County, Ohio entered judgment against Mr. Thompson and in favor of Plaintiff in the amount of $5.5 million plus $297,983.27 in interest.

9. On May 7, 2004, Mr. Thompson personally filed for bankruptcy protection.

DEFENDANT'S REQUESTED INSTRUCTION NO. 3:

Demonstrative Evidence

Exhibit [insert] is an illustration. It is a party's model to describe something involved in this trial. If your recollection of the evidence differs from the exhibit, rely on your recollection.[2]

[2] Pattern Jury Instructions U.S. Fifth Circuit District Judge Association, § 2.8 (2004).

DEFENDANT'S REQUESTED INSTRUCTION NO. 4:

Burden of Proof

In this case, Plaintiff must prove every essential part of its claim by clear and convincing evidence. To be "clear and convincing" the evidence must have more than simply a greater weight than the evidence opposed to it and must produce in your minds a firm belief or conviction about the facts to be proved.[3]

[3] 1 OJI § 3.75 (2002).

DEFENDANT'S REQUESTED INSTRUCTION NO. 5:

Expert Witnesses

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field—he is called an expert witness—is permitted to state his opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it.

In deciding whether to accept or rely upon the opinion of an expert witness, you may consider any bias of the witness, including any bias you may infer from evidence that the expert witness has been or will be paid for reviewing the case and testifying, or from evidence that he testifies regularly as an expert witness and his income from such testimony represents a significant portion of his income.[4]

[4] Pattern Jury Instructions U.S. Fifth Circuit District Judge Association, § 2.19 (2004).

DEFENDANT'S REQUESTED INSTRUCTION NO. 6:

Fraudulent Transfer—Bills of Sale

Plaintiff alleges that Mr. Thompson fraudulently transferred to Mrs. Thompson the property listed in the May 16, 2001, October 10, 2001, and October 10, 2002 bills of sale (the "Bills of Sale"). Plaintiff asserts that Mr. Thompson's action violated the Ohio Uniform Fraudulent Transfer Act, Ohio Revised Code Section 1336.04.

In order to find in Plaintiff's favor on its fraudulent transfer claim, you must find by clear and convincing evidence that:

(A) Mr. Thompson made the transfer of the property listed in the Bills of Sale to Mrs. Thompson in one of the following ways:

(1) With actual intent to hinder, delay, or defraud Plaintiff; or

(2) Without receiving a reasonably equivalent value in exchange for the property listed in the Bills of Sale, and if either of the following applies:

(a) Mr. Thompson was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;

(b) Mr. Thompson intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.[5]

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[5] Ohio Rev. Code § 1336.04(A).

DEFENDANT'S REQUESTED INSTRUCTION NO. 7:

Fraudulent Transfer—Actual Intent to Hinder, Delay, or Defraud Creditor—Bills of Sale

In determining actual intent, consideration may be given to all relevant factors, including, but not limited to, the following:

(1) Whether the transfer of the property to Mrs. Thompson listed in the Bills of Sale was to an insider;

(2) Whether Mr. Thompson retained possession or control of the property listed in the Bills of Sale after the transfer;

(3) Whether the transfer of the property listed in the Bills of Sale was disclosed or concealed;

(4) Whether before the transfer of the property listed in the Bills of Sale was made, Mr. Thompson had been sued or threatened with suit;

(5) Whether the transfer of the property listed in the Bills of Sale was of substantially all of the assets of Mr. Thompson;

(6) Whether Mr. Thompson absconded;

(7) Whether Mr. Thompson removed or concealed assets;

(8) Whether the value of the consideration received by Mr. Thompson was reasonably equivalent to the value of the property transferred pursuant to the Bills of Sale;

(9) Whether Mr. Thompson was insolvent or became insolvent shortly after the transfer of the property listed in the Bills of Sale was made;

(10) Whether the transfer of the property listed in the Bills of Sale occurred shortly before or shortly after a substantial debt was incurred;

(11) Whether Mr. Thompson transferred the essential assets of the business to a lienholder who transferred the assets to an insider of Mr. Thompson.[6]

[6] Ohio Rev. Code § 1336.04(B).

DEFENDANT'S REQUESTED INSTRUCTION NO. 8:

Fraudulent Transfer—Constructive Fraud—Bills of Sale

Plaintiff alleges that Mr. Thompson committed a constructively fraudulent transfer to Mrs. Thompson of the property listed in the Bills of Sale. In order to find in Plaintiff's favor on its constructive fraudulent transfer claim, you must find by clear and convincing evidence that Mr. Thompson transferred the property listed in the Bills of Sale without receiving a reasonably equivalent value in exchange for the property and either of the following:

(a) Mr. Thompson was engaged or was about to engage in a business or a transaction for which the remaining assets of Mr. Thompson were unreasonably small in relation to the business or transaction;

(b) Mr. Thompson intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.[7]

[7] Ohio Rev. Code § 1336.04(A)(2).

DEFENDANT'S REQUESTED INSTRUCTION NO. 9:

Fraudulent Transfer—Reasonably Equivalent Value—Bills of Sale

Mrs. Thompson alleges that she paid Mr. Thompson for the property listed in the Bills of Sale and that the amount she paid was reasonably equivalent to the value of the property. If you find that Mrs. Thompson gave at least the reasonably equivalent value, either to Mr. Thompson or for his benefit,[8] for the property listed in the Bills of Sale, Mr. Thompson did not commit a fraudulent transfer of this property.[9]

[8] *See Rubin v. Mfr. Hanover Trust Co*., 661 F.2d 979, 991-92 (2d Cir. 1981) ("if the consideration given to the third person has ultimately landed in the debtor's hands, or if the giving of the consideration to the third person otherwise confers an economic benefit upon the debtor, then the debtor's net worth has been preserved…").

[9] *Official Unsecured Creditors Comm. of Valley-Vulcan Mold Co. v. Ampco-Pittsburgh Corp. (In re Valley-Vulcan Mold Co.)*, 5 Fed. Appx. 396, 398 (6th Cir. 2001) ("A transfer made for fair consideration is fatal to a cause of action under §§ 1336.04-1336.06"); *In re Jones*, 305 B.R. 276, 280-81 (Bankr. S.D. Ohio 2003) ("Fair consideration is an absolute defense to a fraudulent conveyance action under Ohio law. Both the Sixth Circuit and the Sixth Circuit BAP have construed Ohio law in the same regard"); *Burton v. Triplett*, 2002-Ohio-580, 2002 WL 220900, at *6 (Ct. App. Franklin Cty. 2002) ("the payment of reasonably equivalent value, even if the intent to defraud could be said to exist, is an affirmative defense to a claim under R.C. 1336.04"); *Sease v. John Smith Grain Co., Inc.*, 17 Ohio App. 3d 223, 225, 479 N.E.2d 284, 288 (1984) ("to establish a fraudulent conveyance under either R.C. 1336.04 or 1336.05, a creditor must prove … that the transfer was made without fair consideration").

DEFENDANT'S REQUESTED INSTRUCTION NO. 10:

Definition—Reasonably Equivalent Value—Bills of Sale

In assessing the fairness of consideration, you should compare the value of the property transferred with the value of that received in exchange for the transfer.[10]

[10] *Corzin v. Fordu* (*In re Fordu*), 210 F.3d 693, 707 (6th Cir. 1999).

DEFENDANT'S REQUESTED INSTRUCTION NO. 11:

Reasonably Equivalent Value—Effect on Estate—Bills of Sale

In determining whether fraudulent transfers of the property in the Bills of Sale occurred, you should focus on the effect of the transfers upon Mr. Thompson's financial condition.[11] If you find that Mr. Thompson's financial condition was not harmed by the transfers, then you must find for Mrs. Thompson on that element of Plaintiff's case.

[11] *Blood v. Nofzinger*, 162 Ohio App. 3d 545, 560, 834 N.E.2d 358, 369 (2005) ("constructive fraud focuses on the effect of the transactions"); *Waxenfelter v. Rouch*, 30 Ohio Law Abs. 376, 1938 WL 3159, at *2 (Ct. App. Wayne Cty. 1938) (it is "not the nature or the form of the transaction" when evaluating whether a conveyance is fraudulent); *Barlett Farmers Bank v. Sims*, Case No. 81x23, 1982 WL 3539, at *2 (Ct. App. Washington Cty. 1982) (plaintiff could not be injured "by the transfer of the property…[because] plaintiff's position was improved since the net effect of the transfer on [the debtor's] financial condition was positive")

DEFENDANT'S REQUESTED INSTRUCTION NO. 12:

Reasonably Equivalent Value—Characterization of Payment—Bills of Sale

You do not need to determine whether Mrs. Thompson was buying the property or accepting the property to secure debt so long as the amount of the debt is not an amount disproportionately less than the value of the property Mr. Thompson obtained.[12]

[12] *Rubin v. Manufacturers Hanover Trust Co*., 661 F.2d 979, 991 (2d Cir. 1981); *see, e.g.*, Ohio Jur. 3d *Creditor's Rights* § 594 ("the law regards the thing which the debtor has done, rather than the means by which it is accomplished").

DEFENDANT'S REQUESTED INSTRUCTION NO. 13:

Civil Conspiracy—Fraudulent Transfer—Bills of Sale

In order to find in Plaintiff's favor on its claim of civil conspiracy to commit a fraudulent transfer of the property listed in the Bills of Sale, you must find by clear and convincing evidence that: (1) an agreement, understanding, or design; (2) existed between Mr. Thompson and Mrs. Thompson; (3) to fraudulently transfer, either by actual or constructive fraud, the property listed in the Bills of Sale; and (4) that Plaintiff was damaged as a result of the civil conspiracy to commit a fraudulent transfer between Mr. Thompson and Mrs. Thompson.[13] If you find that Mr. Thompson did not fraudulently transfer the property listed in the Bills of Sale, then Mr. and Mrs. Thompson did not conspire to commit a fraudulent transfer.[14]

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[13] *Aetna Casualty and Surety Co. v. Leahey Const. Co., Inc*., 219 F.3d 519, 534 (6th Cir. 2000); *Kenty v. Transamerica Premium Ins. Co*., 72 Ohio St. 3d 415, 419, 650 N.E.2d 863, 866 (1995); *Universal Coach, Inc. v. New York City Transit Auth., Inc*., 90 Ohio App. 3d 284, 292, 629 N.E.2d 28, 33 (1993); *Gosden v. Louis*, 116 Ohio App. 3d 195, 219, 687 N.E.2d 481, 496 (1996); *Porter v. Saez*, 2004-Ohio-2498, at ¶75 (Ohio App. 2004); *Williams v. Aetna Financial Co*., 83 Ohio St. 3d 464, 475, 700 N.E.2d 859, 868 (2004).

[14] *Williams*, 83 Ohio St. 3d at 475 ("An underlying unlawful act is required before a civil conspiracy claim can succeed"); *Gosden*, 116 Ohio App. 3d at 220 ("if one person could lawfully commit an act, then that act committed by two or more persons cannot support a conspiracy claim"); *Minarik v. Nagy*, 8 Ohio App. 2d 194, 195, 193 N.E.2d 280, 281 (Cuyahoga Cty. 1963) ("When the mischief is accomplished, the conspiracy becomes important"); *Mitchell v. Mid-Ohio Emergency Services, L.L.C*., 2004-Ohio-5264, 2004 WL 2803419, at *10 (Ct. App. Franklin Cty. 2004) (element of civil conspiracy is "the existence of an unlawful act independent of the actual conspiracy").

DEFENDANT'S REQUESTED INSTRUCTION NO. 14:

Transfer—Net Operating Loss Carry-Forward

In order to find that Mr. Thompson fraudulently transferred his Net Operating Loss Carry-Forward to Mrs. Thompson, you must first find that the Net Operating Loss Carry-Forward was transferred from Mr. Thompson to Mrs. Thompson. Under United States tax laws, allowable losses are personal to a taxpayer sustaining them and may not be transferred to another.[15] That principle is not different with joint returns filed by married couples. The filing of a joint tax return by Mr. and Mrs. Thompson did not constitute a transfer of Mr. Thompson's Net Operating Loss Carry-Forward.[16]

[15] *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934) (confining "allowable losses to the taxpayer sustaining them, *i.e*, to treat them as personal to him and not transferable to or usable by another"); *Mellott v. U.S.*, 257 F.2d 798, 801 (3rd Cir. 1958) ("Had there been a purpose … to make the right to the deduction *transferable or available to others* than the taxpayer who sustained the loss … that purpose would have been clearly expressed"); *Patten Fine Papers, Inc. v. C.I.R.*, 249 F.2d 776, 780 (7th Cir. 1957) (court "cannot read into the statute any interpretation that will do violence to the thought that the only taxpayer authorized to carry over a loss is the taxpayer who sustained the loss").

[16] *In re Baker*, 82 B.R. 461, 462 (S.D. Ohio 1987) ("Congress did not alter the rights of the parties in property by providing for the filing of a joint return"); *Wetteroff v. Grand*, 453 F.2d 544, 547 (8th Cir. 1972) ("Congress, in enacting §6013(a) which allows a husband and wife to file a 'single return jointly of income taxes,' intended primarily to equalize the tax burden for married persons in all states, eliminating the disparities which resulted between common law and community property states"); *Johnson v. U.S.*, 422 F.Supp. 958, 965 (N.D. Ind. 1976), *aff'd*, 550 F.2d 1239 (7th Cir. 1977) (noting that the rules on joint returns only deal with how the government calculates taxes); *Taft v. Helvering*, 311 U.S. 195, 197 (1940) ("'if a single joint return is filed it is treated as the return of a taxable unit and the net income disclosed by the return is subject to both normal and surtax as though the return were that of a single individual'") (citing and relying upon a 1921 ruling of the Solicitor of the Internal Revenue); *U.S. v. Allen*, 551 F.2d 208, 210-211 (8th Cir. 1977) ("a joint return under 26 U.S.C. §6013 is treated as the return of a single taxable unit").

DEFENDANT'S REQUESTED INSTRUCTION NO. 15:

Filing of Joint Tax Returns—Net Operating Loss Carry-Forward

Mr. and Mrs. Thompson, as a married couple, may legally and properly file joint tax returns.[17] If Mr. and Mrs. Thompson file a joint return, they may legally and properly offset the business losses of Mr. Thompson against the income of Mrs. Thompson.[18]

[17] Internal Rev. Code § 6013, 26 U.S.C. § 6013 ("A husband and wife may make a single return jointly of income taxes"); 26 C.F.R. § 1.6013-1 ("A husband and wife may elect to make a joint return under section 6013(a) even though one of the spouses has no gross income or deductions").

[18] 26 C.F.R. § 1.172-7.

DEFENDANT'S REQUESTED INSTRUCTION NO. 16:

Civil Conspiracy—Fraudulent Transfer—Net Operating Loss Carry-Forward

In order to find in Plaintiff's favor on its claim of civil conspiracy to commit a fraudulent transfer of the Net Operating Loss Carry-Forward, you must find by clear and convincing evidence that: (1) an agreement, understanding, or design; (2) existed between Mr. Thompson and Mrs. Thompson; (3) to fraudulently transfer, either by actual or constructive fraud, the Net Operating Loss Carry-Forward; and (4) that Plaintiff was damaged as a result of the civil conspiracy to commit a fraudulent transfer between Mr. Thompson and Mrs. Thompson.[19] If you find that Mr. Thompson did not fraudulently transfer the Net Operating Loss Carry-Forward, then Mr. and Mrs. Thompson did not conspire to commit a fraudulent transfer.[20]

[19] *Aetna Casualty and Surety Co. v. Leahey Const. Co., Inc*., 219 F.3d 519, 534 (6th Cir. 2000); *Kenty v. Transamerica Premium Ins. Co*., 72 Ohio St. 3d 415, 419, 650 N.E.2d 863, 866 (1995); *Universal Coach, Inc. v. New York City Transit Auth., Inc*., 90 Ohio App. 3d 284, 292, 629 N.E.2d 28, 33 (1993); *Gosden v. Louis*, 116 Ohio App. 3d 195, 219, 687 N.E.2d 481, 496 (1996); *Porter v. Saez*, 2004-Ohio-2498, at ¶75 (Ohio App. 2004); *Williams v. Aetna Financial Co.*, 83 Ohio St. 3d 464, 475, 700 N.E.2d 859, 868 (2004).

[20] *Williams*, 83 Ohio St. 3d at 475 ("An underlying unlawful act is required before a civil conspiracy claim can succeed"); *Gosden*, 116 Ohio App. 3d at 220 ("if one person could lawfully commit an act, then that act committed by two or more persons cannot support a conspiracy claim"); *Minarik v. Nagy*, 8 Ohio App. 2d 194, 195, 193 N.E.2d 280, 281 (Cuyahoga Cty. 1963) ("When the mischief is accomplished, the conspiracy becomes important"); *Mitchell v. Mid-Ohio Emergency Services, L.L.C.*, 2004-Ohio-5264, 2004 WL 2803419, at *10 (Ct. App. Franklin Cty. 2004) (element of civil conspiracy is "the existence of an unlawful act independent of the actual conspiracy").

DEFENDANT'S REQUESTED INSTRUCTION NO. 17:

Ownership—Tax Refund

In order to find that Mr. Thompson fraudulently transferred the 1999 tax refund to Mrs. Thompson, you must first find that Mr. Thompson owned the tax refund. A tax refund from a joint return filed by a married couple belongs to the spouse who made the overpayments.[21]

[21] *U.S. v. Elam*, 112 F.3d 1036, 1038 (9th Cir. 1997) ("Simply put, the person who overpaid is entitled to claim the overpayment credit"); 26 U.S.C. §6402(a) (refunds of overpayments are to be provided to "the person who made the overpayment"); *United States v. MacPhail*, 149 Fed. Appx. 449, 453 (6th Cir. 2005) (stating that "the IRS looks to the source of the payment, not to the person who incurred the liability…. Only Crane [made the payments], therefore the money is attributable only to her").

DEFENDANT'S REQUESTED INSTRUCTION NO. 18:

Civil Conspiracy—Fraudulent Transfer— Tax Refund

In order to find in Plaintiff's favor on its claim of civil conspiracy to commit a fraudulent transfer of the tax refund, you must find by clear and convincing evidence that: (1) an agreement, understanding, or design; (2) existed between Mr. Thompson and Mrs. Thompson; (3) to fraudulently transfer, either by actual or constructive fraud, the tax refund; and (4) that Plaintiff was damaged as a result of the civil conspiracy to commit a fraudulent transfer between Mr. Thompson and Mrs. Thompson.[22] If you find that Mr. Thompson did not have an ownership interest in the tax refund, then Mr. and Mrs. Thompson did not conspire to commit a fraudulent transfer of the tax refund.[23]

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[22] *Aetna Casualty and Surety Co. v. Leahey Const. Co., Inc*., 219 F.3d 519, 534 (6th Cir. 2000); *Kenty v. Transamerica Premium Ins. Co*., 72 Ohio St. 3d 415, 419, 650 N.E.2d 863, 866 (1995); *Universal Coach, Inc. v. New York City Transit Auth., Inc*., 90 Ohio App. 3d 284, 292, 629 N.E.2d 28, 33 (1993); *Gosden v. Louis*, 116 Ohio App. 3d 195, 219, 687 N.E.2d 481, 496 (1996); *Porter v. Saez*, 2004-Ohio-2498, at ¶75 (Ohio App. 2004); *Williams v. Aetna Financial Co.*, 83 Ohio St. 3d 464, 475, 700 N.E.2d 859, 868 (2004).

[23] *Williams*, 83 Ohio St. 3d at 475 ("An underlying unlawful act is required before a civil conspiracy claim can succeed"); *Gosden*, 116 Ohio App. 3d at 220 ("if one person could lawfully commit an act, then that act committed by two or more persons cannot support a conspiracy claim"); *Minarik v. Nagy*, 8 Ohio App. 2d 194, 195, 193 N.E.2d 280, 281 (Cuyahoga Cty. 1963) ("When the mischief is accomplished, the conspiracy becomes important"); *Mitchell v. Mid-Ohio Emergency Services, L.L.C.*, 2004-Ohio-5264, 2004 WL 2803419, at *10 (Ct. App. Franklin Cty. 2004) (element of civil conspiracy is "the existence of an unlawful act independent of the actual conspiracy").

DEFENDANT'S REQUESTED INSTRUCTION NO. 19:

Fraudulent Transfer—Woodside Property

Plaintiff alleges that Mr. Thompson fraudulently transferred to Mrs. Thompson his alleged community property interest in the Woodside Property. Plaintiff asserts that Mr. Thompson's action violated the Ohio Uniform Fraudulent Transfer Act, Ohio Revised Code Section 1336.04.

In order to find in Plaintiff's favor on its fraudulent transfer claim, you must find by clear and convincing evidence that:

(A) Mr. Thompson had an interest in the Woodside property as of April 26, 2001; and

(B) Mr. Thompson made a transfer of his alleged interest in the Woodside Property to Mrs. Thompson in one of the following ways:

(1) With actual intent to hinder, delay, or defraud Plaintiff; or

(2) Without receiving a reasonably equivalent value in exchange for his alleged interest in the Woodside Property, and if either of the following applies:

(a) Mr. Thompson was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;

(b) Mr. Thompson intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.[24]

[24] Ohio Rev. Code § 1336.04(A).

DEFENDANT'S REQUESTED INSTRUCTION NO. 20:

Ownership—Woodside Property

In order to find that Mr. Thompson fraudulently transferred his community property interest in the Woodside Property to Mrs. Thompson, you must first find that Mr. Thompson owned an interest in the Woodside Property at the time of the claimed transfer, April 26, 2001.[25] If Mr. Thompson had no interest in the Woodside Property on April 26, 2001, you must find for Mrs. Thompson on that element of Plaintiff's case.

[25] Ohio Rev. Code § 1336.04(A) (statue governs the transfer of property of the debtor).

DEFENDANT'S REQUESTED INSTRUCTION NO. 21:

Ownership—Separate Property—Woodside Property

Under California law, the separate property of Mrs. Thompson includes all the property she owned before her marriage to Mr. Thompson.[26] Her marriage to Mr. Thompson in 1999 did not give Mr. Thompson any interest in the property she owned prior to their marriage.[27]

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[26] Cal. Fam. Code § 770.

[27] *In re Marriage of Weaver*, 224 Cal. App. 3d 478, 484 ("separate property does not change its character as a result of the marriage or of its mere use in the marital relationship"); *In re Marriage of Jafeman*, 29 Cal.App.3d 244, 255 (1972) ("The character of the property is fixed as of the time it is acquired and it is not altered by the occurrence of marriage or by the subsequent use of the property in the marital relationship") (internal citations omitted).

DEFENDANT'S REQUESTED INSTRUCTION NO. 22:

Change from Separate to Community Property—Woodside Property

Under California law, spouses may agree to change the status of their property from separate to community property.[28] A spouse may change the character of separate property to community property through a writing that expressly states that the characterization or ownership of the property is being changed.[29] Mr. Thompson could not gain a community property interest in the Woodside Property without a document signed by Mrs. Thompson indicating that she intended to give Mr. Thompson a community interest in the property.[30]

[28] Cal. Fam. Code § 850.
[29] Cal. Fam. Code § 852(a); *Estate of MacDonald*, 51 Cal. 3d 262, 272 (1990).
[30] Cal. Fam. Code § 852(a).

DEFENDANT'S REQUESTED INSTRUCTION NO. 23:

Change from Separate to Community Property —Evidence to Consider— Woodside Property

When considering whether a transmutation of the Woodside Property occurred, the only evidence you may consider is a writing signed by Mrs. Thompson which expressly stated that the characterization or ownership of the Woodside Property was being changed from her separate property to community property.[31] You may not consider any other evidence when determining if the Woodside Property was the community property of Mr. and Mrs. Thompson.

[31] *Estate of MacDonald*, 51 Cal. 3d 262, 272 (1990).

DEFENDANT'S REQUESTED INSTRUCTION NO. 24:

Civil Conspiracy—Fraudulent Transfer—Woodside Property

In order to find in Plaintiff's favor on its claim of civil conspiracy to commit a fraudulent transfer of Mr. Thompson's alleged property interest in the Woodside Property, you must find by clear and convincing evidence that: (1) an agreement, understanding, or design; (2) existed between Mr. Thompson and Mrs. Thompson; (3) to fraudulently transfer, either by actual or constructive fraud, Mr. Thompson's alleged property interest in the Woodside Property; and (4) that Plaintiff was damaged as a result of the civil conspiracy to commit a fraudulent transfer between Mr. Thompson and Mrs. Thompson.[32] If you find that Mr. Thompson did not have a property interest in the Woodside Property, then Mr. and Mrs. Thompson did not conspire to commit a fraudulent transfer.[33]

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[32] *Aetna Casualty and Surety Co. v. Leahey Const. Co., Inc.*, 219 F.3d 519, 534 (6th Cir. 2000); *Kenty v. Transamerica Premium Ins. Co.*, 72 Ohio St. 3d 415, 419, 650 N.E.2d 863, 866 (1995); *Universal Coach, Inc. v. New York City Transit Auth., Inc.*, 90 Ohio App. 3d 284, 292, 629 N.E.2d 28, 33 (1993); *Gosden v. Louis*, 116 Ohio App. 3d 195, 219, 687 N.E.2d 481, 496 (1996); *Porter v. Saez*, 2004-Ohio-2498, at ¶75 (Ohio App. 2004); *Williams v. Aetna Financial Co.*, 83 Ohio St. 3d 464, 475, 700 N.E.2d 859, 868 (2004).

[33] *Williams*, 83 Ohio St. 3d at 475 ("An underlying unlawful act is required before a civil conspiracy claim can succeed"); *Gosden*, 116 Ohio App. 3d at 220 ("if one person could lawfully commit an act, then that act committed by two or more persons cannot support a conspiracy claim"); *Minarik v. Nagy*, 8 Ohio App. 2d 194, 195, 193 N.E.2d 280, 281 (Cuyahoga Cty. 1963) ("When the mischief is accomplished, the conspiracy becomes important"); *Mitchell v. Mid-Ohio Emergency Services, L.L.C.*, 2004-Ohio-5264, 2004 WL 2803419, at *10 (Ct. App. Franklin Cty. 2004) (element of civil conspiracy is "the existence of an unlawful act independent of the actual conspiracy").

DEFENDANT'S REQUESTED INSTRUCTION NO. 25:

Consider Damages Only If Necessary

If Plaintiff has proven its claim against Mrs. Thompson by clear and convincing evidence, you must determine the damages to which Plaintiff is entitled. You should not interpret the fact that I have given instructions about Plaintiff’s damages as an indication in any way that I believe that Plaintiff should, or should not, win this case. It is your task first to decide whether Mrs. Thompson is liable. I am instructing you on damages only so that you will have guidance in the event you decide that Mrs. Thompson is liable and that Plaintiff is entitled to recover money from her.[34]

[34] Pattern Jury Instructions U.S. Fifth Circuit District Judge Association, § 15.1 (2004).

DEFENDANT'S REQUESTED INSTRUCTION NO. 26:

Compensatory Damages

If you find that Mrs. Thompson is liable to Plaintiff, then you must determine an amount that is fair compensation for all of Plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make Plaintiff whole—that is, to compensate Plaintiff for the damage that Plaintiff has suffered. You may award compensatory damages only for injuries that Plaintiff proves were proximately caused by Mrs. Thompson's allegedly wrongful conduct. The damages that you award must be fair compensation for all of Plaintiff's damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize Mrs. Thompson. You should not award compensatory damages for speculative injuries, but only for those injuries which Plaintiff has actually suffered.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that Plaintiff prove the amount of its losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.[35]

[35] Pattern Jury Instructions U.S. Fifth Circuit District Judge Association, § 15.2 (2004).

DEFENDANT'S REQUESTED INSTRUCTION NO. 27:

Compensatory Damages—Injured Party Made Whole

If you find that Plaintiff was injured by the alleged conspiracy between Mr. Thompson and Mrs. Thompson to commit fraudulent transfers, Plaintiff should be made whole. However, Plaintiff should not be placed in a better position than if the alleged conspiracy to commit fraudulent transfers had not occurred.[36]

[36] *Henderson v. Spring Run Allotment*, 99 Ohio App. 3d 633, 645, 651 N.E.2d 489, 497 (1994).

DEFENDANT'S REQUESTED INSTRUCTION NO. 28:

Civil Conspiracy—Fraudulent Transfer—Damages

The amount of compensatory damages Plaintiff may recover for its civil conspiracy claim are the damages caused by the alleged fraudulent transfers from Mr. Thompson to Mrs. Thompson.[37]

[37] *Gosden v. Louis*, 116 Ohio App. 3d 195, 220, 687 N.E.2d 481, 497 (1996) ("measure of recovery for a conspiracy claim [is restricted] to those damages caused by the underlying tort necessary to support the claim for civil conspiracy in the first place"); *Minarik v. Nagy*, 8 Ohio App.2d 194, 193 N.E.2d 280 (1983) ("the tort of civil conspiracy confers no damages separate from the damages caused by the underlying act that is an element of the tort").

DEFENDANT'S REQUESTED INSTRUCTION NO. 29:

Fraudulent Transfer—Measure of Damages

Plaintiff may recover compensatory damages for the value of the assets it alleges were fraudulently transferred from Mr. Thompson to Mrs. Thompson. When evaluating the value of the assets allegedly fraudulently transferred from Mr. Thompson to Mrs. Thompson, you must consider only the value of the property at the time of the transfer.[38]

[38] Ohio Rev. Code § 1336.08(B); 24 Ohio Jur. 3d *Creditors' Rights* § 695.

DEFENDANT'S REQUESTED INSTRUCTION NO. 30:

Fraudulent Transfer—Burden of Proof

Plaintiff has the burden to prove its damages regarding the value of the property it claims was fraudulently transferred.[39] Those damages must be shown with as much certainty as the circumstances permit, and cannot be based on mere speculation or conjecture.[40]

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[39] *Henderson v. Spring Run Allotment*, 99 Ohio App. 3d 633, 641, 651 N.E.2d 489, 497 (1994) (citing *Grantham & Mann, Inc. v. Am. Safety Prod., Inc.*, 831 F.2d 596, 601 (6th Cir. 1987).

[40] RESTATEMENT (SECOND) OF TORTS § 912 (2006) (a party is entitled to compensatory damages if he "establishes by proof the extent of the harm and the amount of money representing adequate compensation with as much certainty as…the circumstances permit"); *Lovelady v. Rheinlander*, 66 Ohio App. 409, 415, 34 N.E.2d 788, 791 (Hamilton County 1940) (quoting and relying on Restatement); *Kahn v. CVS Pharmacy, Inc.*, 165 Ohio App. 3d 420, 426, 846 N.E.2d 904, 909 (2006) (citing *Wagenheim v. Alexander Grant & Co.*, 19 Ohio App. 3d 7, 17, 482 N.E.2d 955, 967 (1983)); *Santana v. Mack*, 889 F.Supp. 223, 226 (D. V.I. 1995) (internal citation omitted); *Johnson v. Healy*, 183 Conn. 514, 515, 440 A.2d 765, 766 (1981) ("When damages are difficult to prove, the proponent is required to prove damages with the precision which the facts permit, but no more"); *Industrial Supply Co. v. Goen*, 58 N.M. 738, 741, 276 P.2d 509, 511 (1954) ("when compensatory damages are susceptible of proof with approximate accuracy and may be measured with some degree of certainty, they must be so proved even in actions of tort") (internal citation omitted);

DEFENDANT'S REQUESTED INSTRUCTION NO. 31:

Nominal Damages

If you find for Plaintiff and that Plaintiff was injured by the alleged conspiracy between Mr. Thompson and Mrs. Thompson to commit fraudulent transfers but Plaintiff failed to prove by the greater weight of the evidence any amount of damages, you may award Plaintiff nominal damages. "Nominal" means trifling or small. Nominal damages are generally $10 or less.[41]

[41] 1 OJI § 23.93 (2002).

DEFENDANT'S REQUESTED INSTRUCTION NO. 32:

Punitive Damages

Plaintiff claims that Mrs. Thompson’s conspiracy to commit fraudulent transfers was of such a nature that Plaintiff is also entitled to punitive damages from Mrs. Thompson in addition to any other damages that you award to Plaintiff.

The purpose of punitive damages is to punish the offending party and to induce the offending party to change its practices. You may decide that Mrs. Thompson is liable for punitive damages if you find by clear and convincing evidence that her conspiracy to commit fraudulent transfers was committed with malice, aggravated or egregious fraud, oppression, or insult, and Plaintiff has presented proof of actual damages that resulted from those acts or failures to act.

To be “clear and convincing,” the evidence must have more than simply a greater weight than the evidence opposed to it, and must produce in your minds a firm belief or conviction about the truth of the matter.

“Malice” includes that state of mind under which a person’s conduct is characterized by a conscious disregard for the rights of other persons that has a great possibility of causing substantial harm.

Fraud is “aggravated” if it is accompanied by the existence of malice or ill will. Fraud is “egregious” if the fraudulent wrongdoing is particularly gross.

"Oppression" is an act or series of acts that wrongfully subject the victim or victims to harm or hardship by the unjust or cruel use of force or authority.

"Insult" means any act or remark that is consciously, deliberately, or intentionally scornful or humiliating.

If you award punitive damages, the amount should be fair and reasonable punishment under all the facts and circumstances. It should not be excessive, or influenced by passion, sympathy, or prejudice.[42]

[42] 1 OJI §§ 3.75, 23.71.

DEFENDANT'S REQUESTED INSTRUCTION NO. 33:

Proof—Punitive Damages

In order for Plaintiff to be entitled to punitive damages, Plaintiff must offer proof beyond the elements of the fraudulent transfer and must establish that proof by clear and convincing evidence.[43]

[43] *In re Youngstown Osteopathic Hosp. Ass'n*, 280 B.R. 400, 416 (Bankr. N.D. Ohio 2002) (no punitive damages: parties' acts in committing fraudulent transfer evidenced no hatred or ill will); *Kenker Box Co. v. Riemeier Lumber Co.*, Case No. C-990803, 2000 WL 1886632, at *5 (Ct. App. Hamilton Cty. 2000) (awarding no attorneys' fees where "there was no evidence of the retaliatory ill will necessary for a showing of malice – an essential element of [the] claims"); *Regency Centre Dev. Co., Ltd. v. Constr. Dimensions, Inc.*, 2003-Ohio-5067, 2003 WL 22215483, at *5-6 (Ct. App. Cuyahoga Cty. 2003) (where plaintiff relied upon finding of fraudulent transfer and had no additional evidence of "actual malice," trial court properly refused awarding attorney fees). Ohio Rev. Code § 2315.21(D)(2)(c)(4) ("[i]n a tort action, the burden of proof shall be upon a plaintiff in question, by clear and convincing evidence, to establish that the plaintiff is entitled to recover punitive or exemplary damages").

DEFENDANT'S REQUESTED INSTRUCTION NO. 34:

Damages—Attorneys' Fees

If you decide that Mrs. Thompson is liable for punitive damages, you must also decide whether or not she is liable for the attorney fees' of counsel employed by Plaintiff in the prosecution of this action. If you decide that Mrs. Thompson is liable for those attorney fees, the court will determine the amount.[44]

[44] 1 OJI §§ 3.75, 23.71; *Zoppo v. Homestead Ins. Co.*, 71 Ohio St. 3d 552, 558, 644 N.E.2d 397, 402 (1994) (citing *Columbus Finance, Inc. v. Howard*, 42 Ohio St. 2d 178, 183, 327 N.E.2d 654, 658 (1975)).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GREAT AMERICAN LIFE INSURANCE COMPANY,	:	**Case No. 04CV815**
	:	**Judge Spiegel**
Plaintiff,	:	
v.	:	
KATHARINE THOMPSON,	:	**DEFENDANT KATHARINE THOMPSON'S PROPOSED SPECIAL INTERROGATORIES**
Defendant.	:	

The jury must unanimously agree on the answer to each question.

Fraudulent Transfer of Property Listed in the May 16, 2001 Bills of Sale

1a. Did Mr. Thompson transfer the property listed in the May 16, 2001 Bill of Sale to Mrs. Thompson with actual intent to delay or defraud Plaintiff:

NO __________ YES __________

Proceed to Question 1b.

1b. Did Mr. Thompson transfer the property listed in the May 16, 2001 Bill of Sale to Mrs. Thompson without receiving a reasonably equivalent value in exchange for the property:

NO __________ YES __________

If you answered NO, sign your name on page 2 without filling in 1c, 1d, 1e, or 1f.
If you answered YES, proceed to Question 1c.

1c. On May 16, 2001, was Mr. Thompson engaged in or about to engage in a business or a transaction for which the remaining assets of Mr. Thompson were unreasonably small in relation to the business or transaction:

NO __________ YES __________

Proceed to Question 1d.

1d. On May 16, 2001, did Mr. Thompson intend to incur, or believe or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due:

NO __________ YES __________

If you answered NO to both Question 1c and 1d, sign your name below without filling in 1e or 1f.
If you answered YES to either Question 1c or 1d, proceed to Question 1e.

1e. Please state the amount of damages, if any, proximately caused by and/or resulting from the fraudulent transfer of the property listed in the May 16, 2001 Bill of Sale:

$ _________________________

If you did not award damages in Question 1e, sign your name below and proceed to Question 2a.
If you awarded damages in Question 1e, proceed to Question 1f.

1f. Did Mr. Thompson and Mrs. Thompson have an agreement to fraudulently transfer the property listed in the May 16, 2001 Bill of Sale:

NO __________ YES __________

Sign your name below. All jurors must agree.

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Proceed to Question 2a.

Fraudulent Transfer of Property Listed in the October 10, 2001 Bill of Sale

2a. Did Mr. Thompson transfer the property listed in the October 10, 2001 Bill of Sale to Mrs. Thompson with actual intent to delay or defraud Plaintiff:

NO ___________ YES ___________

Proceed to Question 2b.

2b. Did Mr. Thompson transfer the property listed in the October 10, 2001 Bill of Sale to Mrs. Thompson without receiving a reasonably equivalent value in exchange for the property:

NO ___________ YES ___________

If you answered NO, sign your name on page 4 without filling in 2c, 2d, 2e, or 2f.
If you answered YES, proceed to Question 2c.

2c. On October 10, 2001, was Mr. Thompson engaged in or about to engage in a business or a transaction for which the remaining assets of Mr. Thompson were unreasonably small in relation to the business or transaction:

NO ___________ YES ___________

Proceed to Question 2d.

2d. On October 10, 2001, did Mr. Thompson intend to incur, or believe or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due:

NO ___________ YES ___________

If you answered NO to both Question 2c and 2d, sign your name below without filling in 2e or 2f.
If you answered YES to either Question 2c or 2d, proceed to Question 2e.

2e. Please state the amount of damages, if any, proximately caused by and/or resulting from the fraudulent transfer of the property listed in the October 10, 2001 Bill of Sale:

$ ________________________

If you did not award damages in Question 2e, sign your name below and proceed to Question 3a.
If you awarded damages in Question 2e, proceed to Question 2f.

2f. Did Mr. Thompson and Mrs. Thompson have an agreement to fraudulently transfer the property listed in the October 10, 2001 Bill of Sale:

NO __________ YES __________

Sign your name below. All jurors must agree.

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Proceed to Question 3a.

Fraudulent Transfer of Property Listed in the October 1, 2002 Bill of Sale

3a. Did Mr. Thompson transfer the property listed in the October 1, 2002 Bill of Sale to Mrs. Thompson with actual intent to delay or defraud Plaintiff:

NO __________ YES __________

Proceed to Question 3b.

3b. Did Mr. Thompson transfer the property listed in the October 1, 2002 Bill of Sale to Mrs. Thompson without receiving a reasonably equivalent value in exchange for the property:

NO __________ YES __________

If you answered NO, sign your name on page 6 without filling in 3c, 3d, 3e, or 3f.
If you answered YES, proceed to Question 3c.

3c. On October 1, 2002, was Mr. Thompson engaged in or about to engage in a business or a transaction for which the remaining assets of Mr. Thompson were unreasonably small in relation to the business or transaction:

NO __________ YES __________

Proceed to Question 3d.

3d. On October 1, 2002, did Mr. Thompson intend to incur, or believe or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due:

NO __________ YES __________

If you answered NO to both Question 3c and 3d, sign your name on page 6 without filling in 3e or 3f.
If you answered YES to either Question 3c or 3d, proceed to Question 3e.

3e. Please state the amount of damages, if any, proximately caused by and/or resulting from the fraudulent transfer of the property listed in the October 1, 2002 Bill of Sale:

$ _________________________

If you did not award damages in Question 3e, sign your name on page 6 and proceed to Question 4a.
If you awarded damages in Question 3e, proceed to Question 3f.

3f. Did Mr. Thompson and Mrs. Thompson have an agreement to fraudulently transfer the property listed in the October 1, 2002 Bill of Sale:

NO __________ YES __________

Sign your name below. All jurors must agree.

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Proceed to Question 4a.

Fraudulent Transfer of Net Operating Loss Carry-Forward

4a. Did Mr. Thompson transfer the net operating loss carry-forward to Mrs. Thompson:

NO ___________ YES ___________

If you answered NO, sign your name on page 7 without filling in 4b, 4c, 4d, 4e, 4f, or 4g.
If you answered YES, proceed to Question 4b.

4b. Did Mr. Thompson transfer the net operating loss carry-forward to Mrs. Thompson with actual intent to delay or defraud Plaintiff:

NO ___________ YES ___________

Proceed to Question 4c.

4c. Did Mr. Thompson transfer the net operating loss carry-forward without receiving a reasonably equivalent value in exchange for the property:

NO ___________ YES ___________

If you answered NO, sign your name on page 7 without filling in 4d, 4e, 4f, or 4g.
If you answered YES, proceed to Question 4d.

4d. At the time of the transfer of the net operating loss carry-forward, was Mr. Thompson engaged in or about to engage in a business or a transaction for which the remaining assets of Mr. Thompson were unreasonably small in relation to the business or transaction:

NO __________ YES __________

Proceed to Question 4e.

4e. At the time of the transfer of the net operating loss carry-forward, did Mr. Thompson intend to incur, or believe or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due:

NO __________ YES __________

If you answered NO to both Questions 4d and 4e, sign your name below without filling in 4f.
If you answered YES to either Question 4d or 4e, proceed to Question 4f.

4f. Please state the amount of damages, if any, proximately caused by and/or resulting from the fraudulent transfer of the net operating loss carry-forward:

$ _________________________

If you did not award damages in Question 4f, sign below and proceed to Question 4g.
If you awarded damages in Question 4f, proceed to Question 4g.

4g. Did Mr. Thompson and Mrs. Thompson have an agreement to fraudulently transfer the net operating loss carry-forward:

NO __________ YES __________

Sign your name below. All jurors must agree.

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Proceed to Question 5a.

Fraudulent Transfer of Tax Refund

5a. Did Mr. Thompson own the 1999 tax refund:

NO ___________ YES ___________

If you answered NO, sign your name on page 9 without filling in 5b, 5c, 5d, 5e, 5f, or 5g.
If you answered YES, proceed to Question 5b.

5b. Did Mr. Thompson transfer the tax refund to Mrs. Thompson with actual intent to delay or defraud Plaintiff:

NO ___________ YES ___________

Proceed to Question 5c.

5c. Did Mr. Thompson transfer the tax refund without receiving a reasonably equivalent value in exchange for the property:

NO ___________ YES ___________

If you answered NO, sign your name on page 9 without filling in 5d, 5e, 5f, or 5g.
If you answered YES, proceed to Question 5d.

5d. At the time of the transfer of the tax refund, was Mr. Thompson engaged in or about to engage in a business or a transaction for which the remaining assets of Mr. Thompson were unreasonably small in relation to the business or transaction:

NO ___________ YES ___________

Proceed to Question 5e.

5e. At the time of the transfer of the tax refund, did Mr. Thompson intend to incur, or believe or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due:

NO __________ YES __________

If you answered NO to both Question 5d and 5e, sign your name below without filling in 5f.
If you answered YES to either Question 5d or 5e, proceed to Question 5f.

5f. Please state the amount of damages, if any, proximately caused by and/or resulting from the fraudulent transfer of the tax refund:

$ _________________________

If you did not award damages in Question 5f, sign your name below and proceed to Question 5g.
If you awarded damages in Question 5f, proceed to Question 5g.

5g. Did Mr. Thompson and Mrs. Thompson have an agreement to fraudulently transfer the tax refund:

NO __________ YES __________

Sign your name below. All jurors must agree.

__________________________ __________________________

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Proceed to Question 6a.

Fraudulent Transfer of Community Property Interest in Woodside Property

6a. Did Mrs. Thompson or a trust for her benefit own the Woodside Property prior to her marriage to Mr. Thompson on November 21, 1999:

NO __________ YES __________

Proceed to Question 4b.

6b. Did Mrs. Thompson make an express declaration in writing prior to April 26, 2001 to change the status of the Woodside Property from separate to community property, thereby giving Mr. Thompson an interest in that property:

NO __________ YES __________

If you answered NO, sign your name on page 12 without filling in 6c, 6d, 6e, 6f, 6g, 6h, or 6i.
If you answered YES, proceed to Question 6c.

6c. Did Mr. Thompson transfer his interest in the property to Mrs. Thompson:

NO __________ YES __________

If you answered NO, sign your name on page 12 without filling in 6d, 6e, 6f, 6g, 6g, 6h, or 6i.
If you answered YES, proceed to Question 6d.

6d. Did Mr. Thompson transfer his interest in the Woodside Property to Mrs. Thompson with actual intent to delay or defraud Plaintiff:

NO __________ YES __________

Proceed to Question 6e.

6e. Did Mr. Thompson transfer his property interest in the Woodside Property without receiving a reasonably equivalent value in exchange for his interest in the property:

NO __________ YES __________

If you answered NO, sign your name on page 12 without filling in 6f, 6g, 6h, or 6i.
If you answered YES, proceed to Question 6f.

6f. At the time of the transfer of the his interest in the Woodside Property, was Mr. Thompson engaged in or about to engage in a business or a transaction for which the remaining assets of Mr. Thompson were unreasonably small in relation to the business or transaction:

NO __________ YES __________

Proceed to Question 6g.

6g. At the time of the transfer of the his interest in the Woodside Property, did Mr. Thompson intend to incur, or believe or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due:

NO __________ YES __________

If you answered NO to both Question 6f and 6g, sign your name on page 12 without filling in 6h.
If you answered YES to either Question 6f or 6g, proceed to Question 6h.

6h. Please state the amount of damages, if any, proximately caused by and/or resulting from the fraudulent transfer of Mr. Thompson's property interest in the Woodside Property:

$ __________________________

If you did not award damages in Question 6h, sign your name on page 12 and proceed to Question 7a.
If you awarded damages in Question 6h, proceed to Question 6i.

6i. Did Mr. Thompson and Mrs. Thompson have an agreement to fraudulently transfer Mr. Thompson's property interest in the Woodside Property:

NO __________ YES __________

Sign your name below. All jurors must agree.

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_____________________________ _____________________________

If you did not award any damages in Questions 1e, 2e, 3e, 4f, 5f, or 6h proceed to the last page of this verdict form, sign and date in the appropriate space, and inform the Bailiff that you have reached a verdict.

If you awarded damages in Question 1e and answered YES to Question 1f or
if you awarded damages in Question 2e and answered YES to Question 2f or
if you awarded damages in Question 3e and answered YES to Question 3f or
if you awarded damages in Question 4f and answered YES to Question 4g or
if you awarded damages in Question 5f and answered YES to Question 5g or
if you awarded damages in Question 6h and answered YES to Question 6i, proceed to Question 7a.

Punitive Damages

7a. Did Mrs. Thompson's acts demonstrate malice, aggravated, or egregious fraud, oppression or insult:

NO ___________ YES ___________

If you answered NO, sign your name on page 10 without filling in 7b, 7c, or 7d.
If you answered YES, proceed to Question 7b.

7b. Did Plaintiff present proof of actual damages that resulted from those malicious, aggravated, or egregiously fraudulent, oppressive or insulting acts of Mrs. Thompson:

NO ___________ YES ___________

If you answered NO, sign your name on page 13 without filling in 7c or 7d.

If you answered YES to both Questions 7a and 7b, proceed to Question 7c.

7c. Please state the amount of damages, if any, proximately caused by and/or resulting from Mrs. Thompson's acts of malice, aggravated, or egregious fraud, oppression or insult:

$ ___________________________

If you did not award damages in Question 7c, sign your name below and proceed to the last page of this verdict form, sign and date in the appropriate space, and inform the Bailiff that you have reached a verdict.
If you awarded damages in Question 7c, proceed to Question 7d.

7d. Should Mrs. Thompson be liable for the attorney fees' of counsel employed by Plaintiff in the prosecution of this action:

NO ___________ YES ___________

If you answered YES with respect to Question 7d, the Court will decide the amount of damages to award to Plaintiff.

After completing Question 7d, sign your name below and proceed to the last page of this verdict form, sign and date in the appropriate space, and inform the Bailiff that you have reached a verdict.

Sign your name below. All jurors must agree.

____________________________ ____________________________

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____________________________ ____________________________

The foregoing represents our verdict, reached this _____ day of December 2006. All jurors must agree.

____
Foreperson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was filed on November 30, 2006 using the Court's CM/ECF system. Notice of this filing will be sent to all CM/ECF participants of record in this matter. A courtesy copy of this document and an electronic version of the document on diskette was delivered to chambers on November 30, 2006.

/s/ william stuart dornette
W. Stuart Dornette